

### **REMARKS**

Applicants respectfully request reconsideration and allowance of this application in view of the following remarks.

#### **1. Status of the Claims**

Claims 1, 4-12, and 18-29 are pending in the application. All of the pending claims were rejected under 35 U.S.C. 103(a) as being unpatentable over Sands, U.S. Patent No. 6,751,977 ("Sands '977") in view of several other references.

#### **2. 35 U.S.C. 103(a) Rejections**

Each of the Section 103 rejections relies on Sands '977 which was published on October 23, 2003, prior to the December 2, 2003 filing date of this application. Sands '977 is not a proper prior art reference because (1) the present invention was made prior to October 23, 2003, the publication date of Sands '977 and (2) at the time the present invention was made, it was commonly owned by the same entity or subject to an obligation of assignment to the same entity as Sands '977.

Specifically, the present invention was complete at least as early as October 20, 2003 as evidenced by a draft application of that date and the attached Declaration Under 37 C.F.R. §1.131 of Jeffrey L. Sands. Mr. Sands is a co-inventor of both the present invention and the invention disclosed in Sands '977. Mr. Sands is also an employee of Carrier Commercial Refrigeration, Inc. ("Carrier"), the original assignee of Sands '977, and at the time the present invention was made was under an obligation to assign the present invention to Carrier. The present application was, in fact, assigned to Carrier. (Both the present application and Sands '977 were subsequently assigned to, and are currently owned by, Restaurant Technology, Inc.)

Consequently, Sands '977 is not prior art, and each of the rejections should be withdrawn.

**CONCLUSION**

In view of the foregoing, all of the rejections have been overcome and claims 1, 4-12, and 18-29 are allowable. An early indication of allowance is solicited.

Respectfully submitted,

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